

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Automatic and Manual Roaming Obligations )

Pertaining to Commercial Mobile Radio Services )

WT Docket No. 00-193

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), hereby replies to the comments filed in response to the Commission's NPRM in the above-captioned proceeding.<sup>1/</sup> AT&T agrees with the many commenters who argue that there is no need to mandate automatic roaming. The recent increase in the number of competitors in each market has made it easier for carriers to negotiate automatic roaming agreements. Small and rural carriers do not suffer from any discrimination by their larger competitors; indeed, carriers offering "national" service are more dependent on automatic roaming agreements than smaller carriers, and therefore have strong incentives to negotiate fair and reasonable rates, terms, and conditions. The section 208 formal complaint process also is available to protect all CMRS providers in the relatively few instances in which another carrier engages in unjust or unreasonable behavior.

Just as the Commission need not mandate automatic roaming, however, it should not by rule absolve carriers of the obligation to provide in-market roaming where it is otherwise justified under sections 201 and 202. The reasonableness of denying such a request is better left to case-by-case adjudication, as are determinations about the reasonableness of any particular

<sup>1/</sup> In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193, Notice of Proposed Rulemaking, FCC 00-361 (rel. Nov. 1, 2000) ("NPRM").

rates, terms, and conditions. The Commission should also allow the current manual roaming requirement to sunset, because the costs outweigh any foreseeable benefit.

## DISCUSSION

### I. **THERE IS NO NEED FOR THE COMMISSION TO MANDATE AUTOMATIC ROAMING**

AT&T agrees with the many commenters who argue that there is no need for the Commission to adopt an automatic roaming requirement because the market is sufficiently competitive to ensure that carriers enter into necessary roaming agreements.<sup>2/</sup> As the Commission itself acknowledges, competition in the CMRS marketplace has increased dramatically since the Commission last examined the issue of automatic roaming.<sup>3/</sup> This increased competition has had a noticeable effect on the roaming market. A carrier that is unable to reach a roaming agreement with one carrier in a market can turn to the second or third (or fifth or seventh) carrier in that market.<sup>4/</sup> Any carrier that refuses to enter into a roaming agreement (without a legitimate business reason for doing so) will simply be sacrificing roaming revenue to its competitors.<sup>5/</sup> As a result of these competitive pressures, automatic roaming agreements between carriers are now the rule, rather than the exception, and wireless subscribers are enjoying the nationwide availability of automatic roaming at lower rates.

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<sup>2/</sup> Cingular at 2-3; CTIA at 3; Verizon at 2, 6; Leap Wireless at 2-4; National Telephone Cooperative Association ("NTCA") at 4.

<sup>3/</sup> NPRM at ¶¶ 9-10 (citing Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fifth Report, FCC 00-289 (rel. Aug. 18, 2000) ("Fifth CMRS Competition Report")).

<sup>4/</sup> Id. at ¶ 10 (noting that 88% of the total U.S. population can choose among three CMRS providers, 69% can choose among five providers and 11% can choose among seven providers).

<sup>5/</sup> See Leap Wireless at 3 (explaining that a carrier that refuses to enter into a roaming agreement in an effort to damage a potential competitor "would merely cut off its nose to spite its face").

The impact of competition on the roaming market is a recent development. When AT&T filed comments in this docket in 1998, it had been unsuccessful in negotiating in-market automatic roaming agreements for its 21 A and B block PCS markets with incumbent cellular operators, who at the time were the only carriers with whom AT&T could negotiate.<sup>6/</sup> Because AT&T was concerned that incumbent cellular operators were denying roaming to new entrants in order to delay the entry of competitors into their markets, AT&T reluctantly advocated a limited automatic roaming requirement.<sup>7/</sup> Since 1998, however, AT&T and other PCS providers have built out their networks and there are now multiple carriers in most markets with whom AT&T can negotiate agreements. AT&T now has roaming agreements with numerous CMRS providers across the country, including small and rural carriers and both cellular and PCS providers.

There is no basis for small carriers' concerns that larger carriers will refuse to enter into roaming agreements with them or will demand high roaming fees.<sup>8/</sup> As Verizon points out, nationwide CMRS providers are more dependent on automatic roaming agreements than other CMRS providers.<sup>9/</sup> Cingular explains that because larger carriers often have coverage gaps in rural areas, they have a strong incentive to negotiate reasonable prices, terms, and conditions.<sup>10/</sup> AT&T itself is not licensed to provide service in certain areas of the country and it therefore has every incentive to enter into reasonable roaming agreements with carriers in those markets so that it can offer nationwide roaming service to its customers, an important element of AT&T's popular Digital One Rate plan. Because rural markets are likely to have fewer carriers with

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<sup>6/</sup> Additional Comments of AT&T Wireless Services, Inc. at 2 (filed Jan. 5, 1998). See also Additional Reply Comments of AT&T Wireless Services, Inc. (filed Jan. 20, 1998).

<sup>7/</sup> Id.

<sup>8/</sup> See, e.g., USCC at 6-7 (expressing concern but acknowledging that its previous negotiations with larger carriers have not reflected any such anti-competitive practices); NTCA at 5; Corr Wireless at 4; Rural Cellular Association at 4-5.

<sup>9/</sup> Verizon at 4, 7-8.

whom a national carrier can negotiate,<sup>11/</sup> the carriers that have built out in those areas are likely to have even greater bargaining power. Speculative concerns about discriminatory treatment of small carriers by larger carriers are unjustified given the realities of the roaming marketplace, and do not support the adoption of any automatic roaming requirement.

Indeed, market incentives will ensure that there are relatively few instances where carriers refuse to enter into roaming agreements or demand unreasonable rates, terms and conditions from any carrier, large or small. There is no need for the Commission to adopt an automatic roaming requirement to address these few situations. Roaming is a common carrier service, and CMRS providers therefore are obligated to provide roaming consistent with the requirements of sections 201 and 202 of the Communications Act.<sup>12/</sup> The Section 208 formal complaint process is available to protect CMRS providers if other CMRS providers engage in unjust or unreasonable discrimination.<sup>13/</sup>

Just as the Commission need not mandate automatic roaming, however, it should not by rule absolve carriers of the obligation to provide in-market roaming where it is otherwise justified under sections 201 and 202.<sup>14/</sup> Such a ruling would be inconsistent with the

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<sup>10/</sup> Cingular at 4.

<sup>11/</sup> See NPRM at ¶ 10 (noting that rural areas are less likely to be experiencing high levels of competition from new entrants).

<sup>12/</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 at ¶ 10 (1996).

<sup>13/</sup> Accord CTIA at 5, Verizon at 10-11. Because the roaming market is sufficiently competitive, roaming agreements should be granted a presumption of reasonableness, consistent with the Commission's longstanding treatment of rates charged by carriers facing competition. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 31-35 (1980). Adopting such a presumption would ensure that CMRS providers have the flexibility they need to respond to market conditions when negotiating roaming agreements, without fear that reasonable discrimination in the terms and conditions of roaming agreements will lead to litigation.

<sup>14/</sup> See Verizon at 12 (asking the Commission to declare that denial of in-market roaming requests is per se reasonable under the Act and the Commission's rules). Verizon also asks the Commission to grant blanket approval for preferential roaming agreements among affiliates. Id.

Commission's holding that roaming is a common carrier service and thus subject to the requirements generally applicable to such services. Granting Verizon's request would prejudice the reasonableness of all requests for in-market roaming, regardless of the circumstances of a particular request. Whether a particular carrier's refusal to enter into a roaming agreement with an in-market competitor is "reasonable" is more appropriately determined on a case-by-case basis.

Determinations of whether particular rates, terms, and conditions are reasonable are also more appropriately made in the context of a specific dispute brought to the agency through the section 208 process. As Verizon explains, the roaming terms it negotiates with other carriers vary, based upon legitimate business considerations such as the need to fill a coverage gap, the volume of traffic that is expected to result from an agreement, and whether Verizon Wireless pays more to the carrier than it receives in roaming charges.<sup>15/</sup> Likewise, United States Cellular Corporation ("USCC") notes that carriers may charge higher rates to distant as opposed to neighboring systems and to carriers with fewer customers.<sup>16/</sup> AT&T also varies the terms of its roaming agreements based upon the particular characteristics of the other carrier and the market in question, and it believes that such variances are reasonable and lawful under sections 201 and 202. The Commission's formal complaint process, however, is a more appropriate vehicle than a rulemaking of general applicability for resolving fact-specific disputes that may arise over regarding whether particular terms and conditions are reasonable.

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By contrast, Small Business in Telecommunications ("SBT") argues that the Commission should ban such preferential roaming agreements. SBT at 4. Whether preferential agreements for affiliates are reasonable is not an issue the Commission needs to resolve here. Rather, it is a judgment better left to case-by-case adjudication if and when another carrier believes it has been harmed unfairly by such an agreement.

<sup>15/</sup> Verizon at 6.

<sup>16/</sup> USCC at 4.

Finally, the Commission should not adopt an automatic roaming requirement because it could hinder CMRS providers' ability to combat fraud. Under an automatic roaming mandate, AT&T could be forced to enter into agreements with carriers that do not offer customers fraud protection commensurate with that offered by AT&T.<sup>17/</sup> AT&T currently includes fraud protection provisions in intercarrier agreements. As CTIA notes, an automatic roaming requirement could interfere with successful marketplace responses that have been developed to protect wireless customers from excessive roaming charges and fraud, like limited suspension of roaming services between city pairs.<sup>18/</sup>

## **II. THE COMMISSION SHOULD ALLOW THE MANUAL ROAMING RULE TO SUNSET**

AT&T also agrees with those commenters who urge the Commission to allow the current rule requiring manual roaming to sunset.<sup>19/</sup> Whatever the prior justification for such a rule, it is now unnecessary. Automatic roaming is cheaper and easier for subscribers and widely available. Manual roaming is not necessary to ensure access to 911 in emergencies, given the Commission's rule requiring carriers to provide all CMRS subscribers and even users of non-initialized phones with 911 service. Moreover, given the strong market incentives for CMRS providers to continue to offer manual roaming,<sup>20/</sup> there is no justification for a regulatory requirement for them to do so.

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<sup>17/</sup> See also Rural Cellular Association at 4 (noting that an automatic roaming requirement would prevent carriers from choosing not to enter into agreements with carriers in markets where there is a high rate of fraud).

<sup>18/</sup> CTIA at 4.

<sup>19/</sup> Cingular at 10; Leap Wireless at 8; Unicom at 5.

<sup>20/</sup> See Boston Communications Group Roaming Services (visited Feb. 5, 2001) <[http://www.bcgi.net/roaming\\_services.html](http://www.bcgi.net/roaming_services.html)> (explaining that unregistered roaming allows carriers to "generate additional roaming revenues without additional cost or effort").

## CONCLUSION

The comments filed in response to the NPRM make it clear that CMRS providers' current practices are not hindering the development of automatic roaming. Market forces provide sufficient incentives for carriers to enter into roaming agreements, given the competitive and increasingly national character of the CMRS marketplace. Because the costs of imposing roaming requirements outweigh any foreseeable benefit, the Commission should not adopt an automatic roaming requirement and should allow the current manual roaming requirement to sunset.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 5th day of February 2001, I caused copies of the foregoing "Reply Comments of AT&T Wireless Services, Inc." to be sent to the following by either first class mail, postage prepaid, or by hand delivery (\*):

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A handwritten signature in cursive script that reads "Michelle Mundt". The signature is written in black ink and is positioned above a horizontal line.

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